IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 644 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHOREKUMAR DAHYALAL KANTARIA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HRIDAY BUCH for Applicant(s) : 1,
Shri RC Kodekar, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR SHAKEEL A QURESHI for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/08/2007
ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code the petitioner

original-complainant, has prayed for an appropriate writ, direction or order quashing and setting aside order dated 22nd March 2007 passed by learned Presiding Officer, Junagadh, below applications Exh. 31 and 33 in Sessions Case No. 25 of 2005 (Annexure 'A') and to allow the applications below Exh. 31 and 33 in Sessions Case No. 25 of 2005.

2. The petitioner herein is husband of one deceased Ritaben who was working with erstwhile Junagadh Municipality. It is the case on behalf of the petitioner that the respondent No.2 was also working on contract with the erstwhile Junagadh Municipality and the respondent No.2 trapped her and induced to develop illicit relations with him. It is also the case on behalf of the petitioner that only out of the said inducement the deceased Ritaben developed relations with respondent No.2 and in July 2004 both ran away to Ahmedabad. The deceased stayed with respondent No.2 for about a month at

Ahmedabad and during the said period of one month she was subjected to physical and mental torture and thereafter she came back to the petitioner and apologized and she started living with the petitioner. It is the case on behalf of the petitioner that thereafter the respondent No.2 used to blackmail the deceased and used to physically and mentally abuse her and deceased used to complain to the petitioner in this regard. That on 18th November 2004 the deceased was physically abducted by the respondent No.2 and was kept in a locked room where she was again subjected to mental and physical cruelty and torture and as the deceased was not found a complaint was also lodged by the petitioner with the District Superintendent of Police, Junagadh about the deceased and ultimately out of frustration, because of torture meted out to her the deceased consumed poison at the house of respondent No.2 and she committed suicide. The petitioner came to know only when the police informed about the death and after completing

religious rituals and after coming out of the trauma the petitioner lodged FIR on 24th November 2004 narrating the aforesaid details for the offences punishable under Sections 498, 342, 343, 364, 366 and 306 of the Indian Penal Code which is registered as C.R. No. 167 of 2004 before the Junagadh Taluka Police Station. Thereafter on completion of investigation the Investigating Officer filed chargesheet before competent court on 21st February 2005. As the case was exclusive triable by the Court of Sessions, the learned Magistrate committed the same to the Court of Sessions and the same is registered as Sessions Case No. 25/2005 before the Court of Sessions, Junagadh. The respondent No.2 filed an application for discharge under Section 227 of the Code of Criminal Procedure, however the said application was dismissed. The Charge was framed below Exhibit 4 and thereafter the trial commenced. The Prosecution examined Dr. RR Kunadia PW 1 at Exh.7; Dr. Sudhaben Shah PW 2 at Exh. 11; Nanaksinh Bhimsinh PW 3 Exh.15; Kusumben

Haribhai PW 4 Exh.16; Joravarsinh Pratapsinh PW 5 at Exh. 17; complainant Kishorekumar Dahyalal PW 6 at Exh.25; and Nirav Kishore PW 7 at Exh. 28. It appears that the Prosecution is yet to examine several other witnesses to establish the charge. It is the case on behalf of the petitioner, original-complainant that in the meantime the petitioner found various articles of the deceased while adjusting/cleaning the wardrobe-cupboard of the deceased and out of those articles the petitioner found two letters, one written by the deceased and another by respondent No.2 written in their respective handwritings. It is the case on behalf of the petitioner that the version narrated in both the said letters written by the deceased as well as respondent No.2 itself corroborates the allegations levelled by the petitioner in the FIR. As according to the petitioner those documents would be very vital piece of evidence for arriving at any just or logical conclusion in the trial the petitioner gave aforesaid two applications below

applications Exh. 31 and 33 for production of the said documents/letters as well as for recalling the petitioner as well as son Nirav in view of the provisions contained in Section 311 of the Code which according to the petitioner empowers the Court to recall the witnesses at any stage of trial for arriving at a just decision in trial. The learned Presiding Officer, Fast Track Court, Junagadh passed the impugned order rejecting both the applications. Being aggrieved and dissatisfied with the order passed by the learned Presiding Officer, Fast Track Court rejecting the applications below Exhs. 31 and 33 in not allowing the petitioners to produce the aforesaid 2 letters and not recalling the aforesaid two witnesses, i.e., the petitioner and his son Nirav, the petitioner original-complainant has preferred the present petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure.

3. Shri Hriday Buch, learned advocate appearing on behalf of the petitioner original-complainant has vehemently submitted that the learned Judge of trial Court has materially erred in not allowing the petitioner to produce the aforesaid two documents which are very vital piece of evidence for arriving at any just or logical conclusion in the trial. It is also further submitted by him that the learned Judge of trial Court has also materially erred in rejecting the application of the petitioner to recall the witnesses, i.e., the petitioner as well as his son Nirav which was very much necessary for arriving at just decision in trial. It is submitted that the aforesaid two letters which were found out subsequently corroborate the allegations levelled against the petitioner in FIR which are vital pieces of evidence for arriving at just and logical conclusion in the trial and that the learned Trial Judge ought to have allowed the applications at Exh. 31 and Exh. 33. It is submitted that by allowing the

petitioner to produce the aforesaid two letters and by recalling the petitioner as well as his son no prejudice would be caused to the respondent No.2 accused as they would be having ample opportunity to cross-examine the witnesses. It is submitted that therefore the impugned order passed by the learned Judge of the trial Court should be set aside and the applications below Exhibits 31 and 33 should be allowed.

4. On the other hand, Shri Shakeel A. Qureshi, learned advocate appearing on behalf of respondent No.2 while opposing the present application has submitted that the learned Judge of the Trial Court for the reasons stated in the impugned order has rightly rejected the applications below Exhibits No. 31 and 33. It is submitted that as rightly observed by the learned Judge of Trial Court those documents were not produced at the relevant time and such documents were not even found out by the Police/Investigating Officer as normally at the

time of investigation by the police, the police/Investigating Officer investigates and verifies all the things in the house and such documents were not found out during the course of trial and/or police investigation and as rightly observed by the learned Judge of Trial Court the contention on behalf of the petitioner that those documents are found out subsequently cannot be believed as they were not found at the relevant time of investigation. Therefore it is requested to dismiss the present Special Criminal Application.

5. Heard the learned Advocates appearing on behalf of respective parties. It appears from the record that the respondent No.2 is chargesheeted for the offences punishable under Sections 498, 342, 343, 364, 366 and 306 of the Indian Penal Code which is registered as C.R. No. 167 of 2004 before the Junagadh Taluka Police Station. It is true that during the trial 7 witnesses were examined on behalf of the

Prosecution inclusive of the petitioner and his son. However during the course of the trial some more witnesses on the side of the Prosecution are yet to be examined. It is the case on behalf of the petitioner that the petitioner while adjusting/cleaning the wardrobe/cupboard found various articles of the deceased which consisted two letters, one written by the petitioner and another written by respondent No.2 in their respective handwritings. It is also the case on behalf of the petitioner that the applications submitted by the deceased as well as the respondent No.2 corroborate the allegations levelled by the petitioner in the FIR and therefore according to the petitioner such documents would be very vital pieces of evidences for arriving at just and logical conclusion in the trial. It is not in dispute that during the course of the trial for arriving at a just and logical conclusion in the trial the Court has jurisdiction to allow production of the vital evidence and to recall the witnesses at any

stage. This Court has considered and gone through xerox copies of the letter which is sought to be produced by the petitioner. It is the case on behalf of the petitioner that the same is in the handwriting of the deceased. On considering the same, it appears that if ultimately the said letter is exhibited and the contents in the said letter are found to be true in that case it would certainly corroborate the allegations levelled by the petitioner in the FIR and the same can be the vital piece of evidence. Under the circumstances, the learned Judge of the Trial Court has materially erred in not allowing the petitioner to produce the said 2 letters and in rejecting the application of the petitioner to recall the petitioner and his son. If such letters are produced in the evidence by recalling the petitioner and his son, no prejudice is likely to be caused to the respondent No.2 herein as the respondent No.2 would be having sufficient opportunity to cross-examine the witnesses. If the petitioner is not allowed to produce the

aforesaid two letters, then prejudice would be caused to the petitioner and the Prosecution as it is the case on behalf of the petitioner original-complainant that the said letter is written by the deceased in her own handwriting and the same will corroborate the allegations levelled in the FIR. It is, therefore, necessary to hold that the learned Judge of the Trial Court has materially erred in dismissing the applications at Exhibit 31 and Exhibit 33 by not allowing the petitioner to produce the aforesaid two letters and not recalling the witnesses, i.e., the petitioner as well as his son.

6. For the reasons stated above, the petition succeeds. The impugned order passed below Applications at Exhibit 31 and Exhibit 33 by the learned Judge of the Trial Court is hereby quashed and set aside and the Applications at Exhibit 31 and Exhibit 33 are allowed. The Trial Court is directed to further proceed with the trial by allowing the Applications at Exhibit 31

and Exhibit 33. The respondent No.2 would be given ample opportunity to cross-examine the witnesses and also to deal with production of aforesaid 2 letters/documents. Rule is made absolute accordingly.

[M.R. Shah, J.]

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